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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 111.

WILLIAM SAMUEL BIGBY, PLAINTIFF IN ERROR,

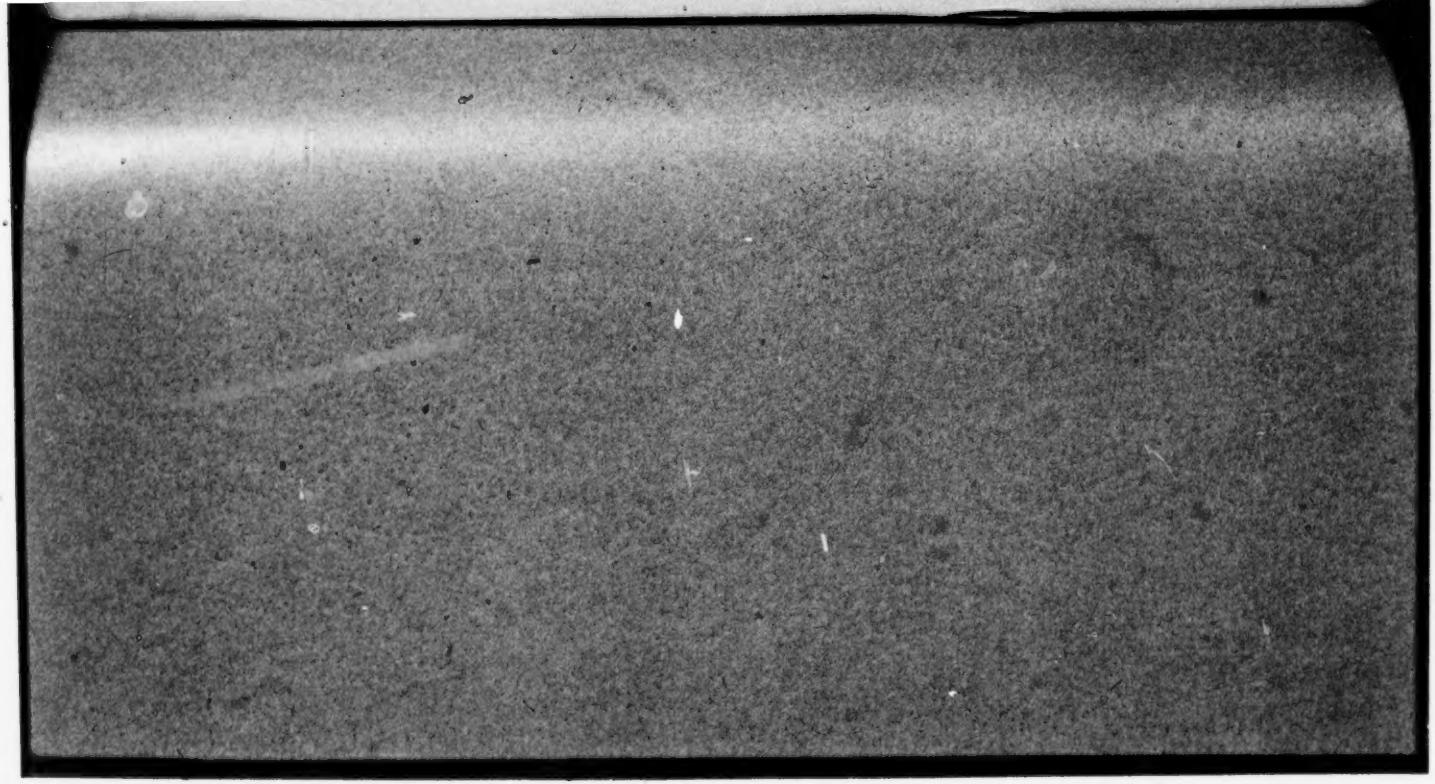
vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED JUNE 1, 1901.

(18,191.)



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 28, 1902.

1 Circuit Court of the United States for the Eastern District of New York.

WILLIAM SAMUEL BIGBY
against
THE UNITED STATES OF AMERICA.

SIRS: Please take notice that the within amended petition was duly filed with the clerk of the circuit court of the United States for the eastern district of New York on the 27th day of November, 1899, which court has jurisdiction of the case set forth in said petition and in which district plaintiff resides.

New York, November 27th, 1899.

Yours &c.,
ROGER FOSTER,
Attorney for Plaintiff, Petitioner, 35 Wall Street, Borough of Manhattan, New York.

To the honorable the Attorney General of the United States and to the honorable the attorney of the United States for the eastern district of New York.

2 Circuit Court of the United States for the Eastern District of New York.

WILLIAM S. BIGBY
against
THE UNITED STATES OF AMERICA.

And now comes the plaintiff and petitioner and amends the petition heretofore filed by him herein so as to change his name wherever the same occurs in the title and in the body of said petition, from William S. Bigby to William Samuel Bigby. A copy of the petition as amended is hereto annexed.

New York, November 27th 1899.

Yours &c.,
ROGER FOSTER,
Attorney for Plaintiff, Petitioner, 35 Wall Street, Borough of Manhattan, New York.

3 Circuit Court of the United States for the Eastern District of New York.

WILLIAM SAMUEL BIGBY
against
THE UNITED STATES OF AMERICA.

To the honorable the judges of the circuit court of the United States for the eastern district of New York and to the honorable the circuit court of the United States for the eastern district of New York:

Your petitioner, by Roger Foster his attorney respectfully shows:—

I. The United States of America is a corporation created by the

Constitution of the United States with its principal office in the city of Washington and the District of Columbia; and your petitioner alleges upon information and belief, that within the meaning of the definitions of the New York Code of Civil Procedure said United States of America is a foreign corporation.

II. Your petitioner resides at Nos. 29 and 31 De Kalb avenue in the borough of Brooklyn, county of Kings and city of New York; and in the eastern district of New York.

III. On or about November, 27th, 1899, your petitioner at the request of the said United States of America and at the request of the officers, employees and duly authorized agents of the said
4 United States of America, each of which officers, agents and employees was acting within the scope of his authority, entered into a passenger elevator in the United States court-house and post-office building in said borough of Brooklyn, which said building and elevator were then owned and controlled by the United States of America and which elevator was designed and intended by the said United States of America for the use of persons on their way to the office of the marshall of the United States for the eastern district of New York; which entry was made by our petitioner while on his way to the said marshall's office upon official business.

IV. The United States of America then and there entered into an implied contract with your petitioner wherein and whereby for a sufficient valuable consideration it agreed to carry your petitioner safely; to operate said elevator with due care; and to employ for the purposes of the operation of said elevator a competent and experienced person.

V. In violation of said contract said United States of America failed to carry your petitioner safely; and failed to operate said elevator with due care; and failed to employ for the operation of said elevator and to put in charge of the same a competent and experienced person; and violated its said contract with your petitioner in other ways.

VI. In consequence of the failure of the United States and of its employees in charge of said elevator to carry your petitioner
5 safely and to operate said elevator with due care; and in consequence of the failure of the United States to employ a competent and experienced person to operate said elevator; and in consequence of the incompetence and inexperience of the person then engaged in operating said elevator and in charge of the same, and in consequence of the said violation by the United States of its said contract your petitioner while entering the said elevator without negligence on his part was caused to fall and his foot, ankle and leg were crushed between said elevator and the top of the entrance into the elevator shaft or a projection in the shaft of said elevator or in some other manner and the back of your petitioner and other parts of the body of your petitioner were also consequently injured and your petitioner consequently suffered a laceration of the ligaments of his ankle and he consequently was caused much bodily and mental pain.

VII. In consequence thereof your petitioner was obliged to spend

and incur considerable sums of money for medical and surgical attendance and he was confined to the house and prevented from attending to his business and from earning money for a considerable period of time and he has been made permanently lame and his said foot, ankle and back have been permanently injured; and he has been thus and otherwise damaged, in the sum of ten thousand dollars ($10,000).

Wherefore, your petitioner prays for a judgment or decree
6 against the United States of America upon the facts and law for the sum of ten thousand dollars ($10,000) together with his reasonable costs and disbursements and for such other and further relief in the premises as may be just.

WILLIAM SAMUEL BIGBY, *Petitioner.*
ROGER FOSTER,
Petitioner's Attorney, 35 Wall Street, New York.

7 STATE OF NEW YORK, }
County of Kings, Eastern District of New York, } *ss:*

William Samuel Bigby, being duly sworn, deposes and says: I am the above-named petitioner. The foregoing petition is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief and as to those matters I believe it to be true.

WILLIAM SAMUEL BIGBY.

Sworn to before me this 27th day of November, 1899.

E. M. SMITH, [SEAL.]
Notary Public, Kings County, New York.

Endorsed: Amendment to petition, notice and amended petition Filed November 27, 1899.

8 Circuit Court of the United States for the Eastern District of New York.

WILLIAM SAMUEL BIGBY
against
THE UNITED STATES OF AMERICA. }

COUNTY OF NEW YORK, *ss:*

Edward Harding, being duly sworn, deposes and says: I reside in the borough of Manhattan, in the county and State of New York. I am of the age of 21 years and upwards. On the 27th day of November, 1899, I served the amendment herein, the amended petition, together with a notice that the said amendment and said amended petition had been filed on the 27th day of November, 1899, in the office of the clerk of the circuit court of the United States for the eastern district of New York by delivering to and leaving with an assistant district attorney in charge of the office of said district attorney, a true copy thereof; the said district attorney being then absent there-

from. Deponent further says that on the aforesaid day he mailed a copy of the aforesaid papers, postage prepaid, by registered letter, in the post-office in the borough of Brooklyn in the county of Kings, and State of New York addressed to the "Hon. John W. Griggs, Attorney General of the United States, Washington, D. C."

EDWARD HARDING.

Sworn to before me this 28th day of November, 1899.

E. J. ESSELSTYN,
Notary Public, N. Y. Co.

9 At a stated term of the circuit court of the United States for the eastern district of New York, held in the Post-office building in the borough of Brooklyn, city of New York and county of Kings on the 19th day of May, 1900.

Present: Hon. Edward B. Thomas, district judge.

WILLIAM SAMUEL BIGBY
against
UNITED STATES OF AMERICA.

After hearing Roger Foster, Esquire of counsel for the petitioner and plaintiff above named and George H. Pettit, Esq., United States district attorney being present in court and not opposing, on motion of Roger Foster, attorney for plaintiff and petitioner, it is,

Ordered, that the amended petition herein be and the same hereby is amended by changing the date from "1899" in paragraph III thereof to "1893," without prejudice to the demurrer herewith filed to said petition, which amendment shall take effect *nunc pro tunc* as of November, 27th, 1899 when said petition was filed.

EDWARD B. THOMAS,
District Judge.

Endorsed: Order amending petition. Filed & entered May 19, 1900.

10 Circuit Court of the United States for the Eastern District of New York.

WILLIAM SAMUEL BIGBY
against
UNITED STATES OF AMERICA.

COUNTY OF NEW YORK, *ss:*

Edward Harding, being duly sworn, deposes and says: I reside in the county and State of New York. I am of the age of twenty-one years and upwards. On the 29th day of May, 1900, I served the foregoing proposed order with notice of settlement, on George H. Pettit, Esquire, United States district attorney for the eastern district of New York, by depositing in a post-office box in the county of New York, maintained by the Government of the United States, a copy of the same, contained in a securely closed postpaid wrapper,

directed to the said Pettit at the Post-office building, Brooklyn, New York.

EDWARD HARDING.

Sworn to before me this 31st day of May, 1900.

E. J. ESSELSTYN,
[L. S.] *Notary Public, N. Y. Co.*

11 United States Circuit Court for the Eastern District of New York.

WILLIAM SAMUEL BIGBY
against
UNITED STATES OF AMERICA.

Please to enter my appearance as attorney for the defendant in the above-entitled cause.

GEORGE H. PETTIT,
Attorney for Defendant.

Dated, Jan. 24, 1900.

To the clerk of the circuit court of the United States for the eastern district of New York.

Endorsed: Notice of appearance Filed and entered the 24th day of Jan'y 1900.

12 Circuit Court of the United States for the Eastern District of New York.

WILLIAM SAMUEL BIGBY
vs.
UNITED STATES OF AMERICA. } Demurrer.

To the honorable the judges of the circuit court of the United States for the eastern district of New York and to the honorable the circuit court of the United States for the eastern district of New York:

Now comes the defendant, The United States of America, into this court, by George H. Pettit, United States attorney for the eastern district of New York, who appears specially herein, for the sole purpose of demurring to the petition of William Samuel Bigby, petitioner in the above-entitled action, upon the following grounds:

First. The United States of America demurs to the petition of William Samuel Bigby, petitioner herein, upon the ground that it appears upon the face of the petition that the court has no jurisdiction of the person of the defendant.

Second. The United States of America demurs to the petition of William Samuel Bigby, petitioner herein, upon the ground that it appears upon the face of the petition that the court has no jurisdiction of the subject of the action.

Third. The United States of America demurs to the petition
13 of William Samuel Bigby, petitioner herein, upon the ground that it appears upon the face of the petition that said petition does not state facts sufficient to constitute a cause of action.

Wherefore the defendant, United States of America, prays that the petition of the plaintiff, William Samuel Bigby herein, be dismissed, together with reasonable costs and disbursements to the defendant, and for such other and further relief in the premises as may be just.

GEORGE H. PETTIT,
United States Attorney and Attorney for the Defendant,
Post-office Building, Brooklyn, N. Y.

Endorsed: Demurrer Filed January 24, 1900.

14 United States Circuit Court for the Eastern District of New York.

WILLIAM SAMUEL BIGBY
vs.
THE UNITED STATES OF AMERICA.

AUGUST 9, 1900.

Roger Foster, Esq., attorney for plaintiff.
George H. Pettit, Esq., U. S. attorney.

THOMAS, *J.:*

The demurrer is to a petition stating in effect that the petitioner, while on his way to the marshal's office, in the Post-office building in the city of Brooklyn, was injured by the incompetence of a person in charge of an elevator in said building, operated by the United States, which was a breach of an implied contract whereby the United States agreed to carry the petitioner safely. The cause of action exists, if at all, under that part of the Tucker act, of March 1887 (24 Stat. at Large 505) which permits recovery against the United States for claims founded "upon any contract, expressed "or implied, with the Government of the United States, or for dam-"ages, liquidated or unliquidated, in cases not sounding in tort, in "respect of which claims the party would be entitled to redress "against the United States either in a court of law, equity, or ad-"miralty, if the United States were suable."

The elevator is the usual passenger elevator employed in build-
15 ings of the United States, and is devoted solely to the purpose of the Government. The United States was not a common carrier in the operation of such elevator, for "no one can "be considered as a common carrier unless he has, in some way, held "himself out to the public as a carrier, in such manner as to render "him liable to an action if he should refuse to carry for any one who "wished to employ him." (Allen *v.* Sackrider, 37 N. Y. 341, 342.) Neither did the United States expressly stipulate with the petitioner for his carriage, nor did the law imply such undertaking. The law

does not imply a contract to carry even in the case of common carriers. It often happens that a common carrier of goods does make a contract for their transportation. Under existing modes of business such contracts are usually made by such carriers, although infrequently by common carriers of passengers. If an expressed contract to carry exists, the declaration may be upon the contract, although the offended person may declare upon the duty imposed by law. But when there is a mere refusal to carry, or injury or delay, the declaration should be upon the duty implied by law, and not upon the contract, unless there be some negotiation between the parties tantamount to an agreement. In other words, a contract to carry is not implied. If it exists it is because it has been expressed; for where the law imposes the duty to carry, it would be idle to imply a contract to carry. When the law commands something to be done, it need, and does not resort to the fiction that the party commanded impliedly contracted to do the act. Hence there is no implied contract for the reasons stated, even if the United States be regarded as a common carrier. But the true relation of the parties in fact and legal theory is this: For the purpose of transacting
16 business with its officials, the United States extended to the petitioner a license to enter its building and to use in connection therewith the facilities for passing from floor to floor. This permission imposed a duty upon the Government. The duty respecting its elevator was similar to that relating to the safety of the floors, stairs, or any other part of its building. The duty was the same as that imposed upon the owner of any building having a public relation. The duty grew out of a permission to enter and to use the building for the purpose for which it was intended. This permission imposed upon the United States the duty to use ordinary care that the facilities offered to its licensees should be in a state of reasonable safety, and a breach of such duty would constitute culpable negligence. Hence the declaration in the present case must be in tort, which brings the case within the exception stated in the Tucker act. The learned counsel for the petitioner urges that a license to enter private premises is a contract expressed or implied accordingly as the license is expressed or implied. In the present case the license to enter and use the elevator is implied, hence it would be asserted that there was an implied contract to enter. Here again the suggestion is to imply a contract for the purpose of raising a duty, when the law already imposes the duty without implication of a contractual relation. Moreover, the courts and systematic writers have not classed with contracts a mere permission to do or forbear the doing of an act, but have rather regarded such license as authority to do something that otherwise would be unlawfully done. Hence it cannot be in-
17 ferred that Congress by use of the term "implied contract" intended to include mere breaches of duty productive of injury to the licensee upon property of the Government.

The authorities collected by the several counsel are interesting and instructive as is the discussion of the case in the briefs presented. From these and other sources are gathered essential and simple

principles which govern the present issue and require that the demurrer should be sustained, with costs.

EDWARD B. THOMAS, *U. S. J.*

18 At a stated term of the circuit court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the borough of Brooklyn, city of New York, on the third day of November, 1900.

Present: The Honorable Edward B. Thomas, district judge holding the court.

WILLIAM SAMUEL BIGBY
vs.
THE UNITED STATES OF AMERICA.

A petition having been duly filed herein by William Samuel Bigby, petitioner herein, and a demurrer thereto having been served by George H. Pettit, United States attorney for the eastern district of New York, in behalf of the defendant herein, on the following grounds:

First. That it appears on the face of said petition that the court has no jurisdiction of the person of the defendant.

Second. That it appears on the face of the said petition that the court has no jurisdiction of the subject of the action.

Third. That it appears on the face of the said petition that said petitioner does not state facts sufficient to constitute a cause of action against the defendant.

And the said matter having come on regularly to be heard by the court, after hearing George H. Pettit, United States attorney, in behalf of the defendant, in support of the demurrer, and

19 Roger Foster, Esq., of counsel for the petitioner, in opposition thereto,

It is ordered that said demurrer be and is hereby sustained on all of the grounds aforesaid, and so far as it is sustained upon the ground that it does not state a cause of action, it is so sustained because such a cause of action as is stated in the petition is not authorized to be maintained against the United States by the Tucker act, namely chapter 359 of the Acts of the Second Session of the Forty-ninth Congress, approved March 3rd, 1887, and

It is further ordered that said petition be dismissed with costs to the defendant, and the clerk is hereby directed to enter final judgment herein in accordance therewith.

EDWARD B. THOMAS, *U. S. J.*

Endorsed: Order Filed and entered November 3, 1900.

20 Circuit Court of the United States for the Eastern District of New York.

WILLIAM SAMUEL BIGBY
vs.
THE UNITED STATES OF AMERICA. } Judgment.

A petition having been duly filed herein by William Samuel Bigby, petitioner herein, and a demurrer thereto having been served by George H. Pettit, United States attorney for the eastern district of New York, in behalf of the defendant herein, on the following grounds:

First. That it appears on the face of said petition that the court has no jurisdiction of the person of the defendant.

Second. That it appears on the face of the said petition that the court has no jurisdiction of the subject of the action.

Third. That it appears on the face of the said petition that said petition does not state facts sufficient to constitute a cause of action against the defendant.

And said cause having come regularly on to be heard by this court, at a stated term thereof, held in and for the eastern district of New York, in the Federal building, borough of Brooklyn, city of New York, on the nineteenth day of May, 1900, on the issues of law raised by said demurrer filed to said petition, and after hearing George H. Pettit, Esq., United States attorney, in behalf of the defendant, in support of said demurrer, and Roger Foster, Esq., of counsel for the petitioner, in opposition thereto, and an order
21 having been duly made and entered herein on the third day of November, 1900, sustaining the said demurrer, on all the grounds aforesaid, and directing that the said petition be dismissed with costs to the defendant, and that the clerk enter judgment herein in accordance with said order, and the costs herein having been adjusted by the clerk at twelve dollars and ninety cents ($12.90): Now, on motion of George H. Pettit, United States attorney, it is

Adjudged that the demurrer of The United States of America, the defendant herein, be, and the same is hereby, in all respects sustained, and it is further

Adjudged that the petition of the plaintiff herein be, and the same is hereby, dismissed, and that the defendant recover from the plaintiff herein the sum of twelve dollars and ninety cents ($12.90), costs as adjusted by the clerk, and that defendant herein have execution therefor.

Dated Brooklyn, Jan'y 30, 1901.

By the court,

B. LINCOLN BENEDICT, *Clerk.*

22 Circuit Court of the United States for the Eastern District of New York.

WILLIAM SAMUEL BIGBY
against
UNITED STATES OF AMERICA.

Assignment of Errors.

And now comes William Samuel Bigby, the above-named plaintiff, and who in connection with his petition for a writ of error, makes the following assignment of errors; and shows in the record and proceedings in the above-entitled suit, that there is manifest error in these amongst other things, to wit:

I. The court erred in the making and filing and entering of a decision herein which sustained the demurrer herein with costs.

II. The court erred in the making and filing and entering of an order which sustained the demurrer herein.

III. The court erred in the making and filing and entering of an order which dismissed the petition herein with costs.

IV. The court erred in the making and filing and entering of a judgment herein which sustained the demurrer.

V. The court erred in the making and filing and entering of a judgment herein which dismissed the petition herein with costs.

VI. The court erred in the making and filing and entering
23 of a decision, order and judgment herein which sustained the demurrer herein on the ground "that it appears on the face of said petition that the court has no jurisdiction of the person of the defendant."

VII. The court erred in the making and filing and entering of a decision, order and judgment herein which sustained the demurrer herein upon the ground "that it appears on the face of the said petition that the court has no jurisdiction of the subject of the action."

VIII. The court erred in the making and filing and entering of a decision, order and judgment herein which sustained the demurrer herein upon the ground "that it appears on the face of said petition that said petitioner does not state facts sufficient to constitute a cause of action against the defendant."

Wherefore the said William Samuel Bigby prays that the said decision, order and judgment be reversed, annulled and altogether held for nothing, and that he may be granted the relief prayed by him in his petition herein; and for such other and further relief in the premises as to the Supreme Court of the United States may seem just, together with his costs of this writ of error.

WILLIAM SAMUEL BIGBY, *Petitioner*,
By ROGER FOSTER,
Attorney for Petitioner, 35 *Wall St., New York.*

Endorsed: Assignment of error; filed May 13, 1901.

24 Circuit Court of the United States for the Eastern District of New York.

WILLIAM SAMUEL BIGBY
against
THE UNITED STATES OF AMERICA.

To the Honorable Edward B. Thomas, United States district judge:

The petition of William Samuel Bigby respectfully shows as follows:

I. Heretofore and on or about the 20th day of Nov. 1899, your petitioner William Samuel Bigby duly filed in circuit court of the United States for the eastern district of New York a petition against the United States of America in which your petitioner prayed for a judgment or decree against the United States of America upon the facts and law, for the sum of ten thousand ($10,000) dollars, together with his reasonable costs and disbursements; and on or about the 27th day of Nov. 1899, your petitioner duly filed an amended petition wherein he prayed for the same relief, On or about May 19th 1900, an order was duly made and entered herein amending the amended petition herein.

II. Subsequently, and on or about the 24th day of Jan. 1900, a demurrer to said petition was duly filed and served in behalf of the defendant therein, on the following grounds:

"First. That it appears on the face of said petition that
25 the court has no jurisdiction of the person of the defendant. Second. That it appears on the face of said petition that the court has no jurisdiction of the subject of the action. Third. That it appears on the face of said petition that said petitioner does not state facts sufficient to constitute a cause of action against the defendant."

III. On or about the 19th day of May 1900 the argument of the said demurrer duly came on to be heard before the Honorable Edward B. Thomas, United States district judge, who on or about Aug. 9th 1900 made and filed a decision sustaining said demurrer with costs; and who on or about the 3rd day of Nov. 1900 duly made and filed therein an order that the said demurrer be sustained on all of the grounds aforesaid and so far as it was sustained upon the ground that it did not show a cause of action, it was so sustained on the ground that such a cause of action as is stated in the petition is not authorized to be maintained against the United States by the Tucker act, namely chapter 359 of the Acts of the Second Session of the 49th Congress, approved March 3rd 1887; and it was thereby further ordered that the said petition be and it was thereby dismissed with costs to the defendant and on or about the 30th day of Jan. 1901 a final judgment was duly made and entered herein in accordance with said order.

IV. On or about the 31st day of Jan. 1901 by a certificate duly made and signed by said Honorable Edward B. Thomas the circuit

court of the United States for the eastern district of New
26 York thereby certified to the Supreme Court of the United States among other things that in this cause the jurisdiction of the said circuit court of the United States for the eastern district of New York is in issue; it thereby further certified to the Supreme Court of the United States said question of jurisdiction raised by said demurrer to the petition on the ground aforesaid, namely: the question whether a person who is not, and has not been, an employee of the United States, can sue the United States, in the circuit court of the United States in the district in which he resides to recover damages to the amount of ten thousand ($10,000) dollars which damages were caused by the personal injury received by said person through the negligence of an employee of the United States, which said person injured as aforesaid was being carried on an elevator in a public building owned and used by the United States as a post-office and for other governmental uses and purposes, when said persons entered said elevator for the purpose of visiting the office of the United States marshal of such district on official business.

V. Your petitioner conceives himself to be aggrieved by the decision and judgment herein in favor of this defendant and against this plaintiff in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of the plaintiff herein all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore your petitioner prays that a writ of error may
27 issue in his behalf to the United States circuit court for the eastern district of New York for the correction of errors so complained of, and a transcript of the record, proceeding, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States; and that your petitioner may have such other and further relief in the premises as may be just; and your petitioner will ever pray etc.

Dated, New York, May 2d 1901.

WILLIAM SAMUEL BIGBY, *Petitioner*,
By ROGER FOSTER,
Attorney for Petitioner, 35 *Wall St., New York.*

Allowed.

EDWARD B. THOMAS,
U. S. District Judge, Holding the Circuit Court.

Endorsed: Petition for writ of error, filed May 13, 1901.

28 Circuit Court of the United States for the Eastern District of New York.

WILLIAM SAMUEL BIGBY
against
THE UNITED STATES OF AMERICA.

Know all men by these presents, that we, William S. Bigby, as principal, residing at No. 31 De Kalb Ave., and Joseph Millward

Wade, as surety, residing at 32 Schermerhorn street, Brooklyn, N. Y., and Otto H. Huebel, as surety, residing at 93 Van Buren St., Brooklyn, N. Y., are held and firmly bound unto the defendant, The United States of America, in the full and just sum of two hundred and fifty ($250) dollars to be paid to said defendants; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this — day of February, 1901.

Whereas, lately at a circuit court of the United States for the eastern district of New York, in a suit depending in said court, between William Samuel Bigby, plaintiff, and The United States of America, defendant, an order was duly made and entered herein, on or about the 3d day of November, 1900, which ordered that the demurrer herein to the petition of the plaintiff be and it was
29 thereby sustained and that the said petition be and it was thereby dismissed with costs to the defendant herein; and

Whereas, on or about the thirtieth day of January, 1901, a judgment was made and entered herein in accordance with the aforesaid order; and

Whereas, the said William Samuel Bigby duly obtained a writ of error to reverse the said judgment and said order, and filed a copy thereof in the clerk's office of said court, and a citation having issued directed to the said The United States of America citing and admonishing it to be and appear at a session of the Supreme Court of the United States, to be holden at Washington, D. C., on the — day of ——

Now, the condition of the above obligation is such, that if the said William Samuel Bigby, shall prosecute said writ of error to effect and answer all damages and costs if he fail to make the said plea good, then the above obligation to be void, else to remain in full force and virtue.

JOSEPH M. WADE. [SEAL.]
OTTO H. HUEBEL. "
WILLIAM SAMUEL BIGBY. "

Sealed and delivered in presence of—
As to Joseph M. Weed,
JOHN C. RHODES.
JONATHAN HALL,
As to Otto H. Huebel.
EDWARD HARDING,
As to William Samuel Bigby.

30 STATE OF NEW YORK, }
County of Kings, Eastern District of New York. }

Joseph Millward Wade, being duly sworn, says: that he is a resident and householder within the State of New York, and worth twice the sum specified in the above bond, over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

JOSEPH M. WADE.

Sworn to before me this 3d day of April, 1901.

JOHN C. RHODES,
Commissioner of Deeds, the City of New York,
Residing in the Borough of Brooklyn.

STATE OF NEW YORK,
County of Kings, Eastern District of New York, } ss:

Otto H. Huebel, being duly sworn, says that he is a resident and a freeholder within the State of New York, and worth twice the sum specified in the above bond, over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

OTTO H. HUEBEL.

Sworn to before me this 16 day of April, 1901.

JONATHAN HALL,
[L. S.] *Notary Public, Kings Co., N. Y.*, 135.

STATE OF NEW YORK,
County of Kings.

On this 3d day of April, 1901, before me personally appeared Joseph M. Wade, to me known and known to me to be the individual in and who executed the foregoing instrument, and who acknowledged to me that he executed the same.

JOHN C. RHODES,
Commissioner of Deeds, the City of New York,
Residing in the Borough of Brooklyn.

31 STATE OF NEW YORK,
County of Kings.

On this day 16th of April, 1901, before me personally appeared Otto H. Huebel, to me known and known to me to be the individual in and who executed the foregoing instrument, and who acknowledged to me that he executed the same.

JONATHAN HALL,
[L. S.] 135, *Notary Public, Kings County, N. Y.*

STATE OF NEW YORK,
County of Kings, } ss:

On this 26th day of April, 1901, before me personally appeared Joseph Millward Wade, to me known and known to me to be the individual who executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same.

H. H. TAYLOR,
[L. S.] *Notary Public, Kings Co., N. Y.*, 81.

STATE OF NEW YORK,
County of Kings, Eastern District of New York. }

Joseph Millward Wade being duly sworn says that he is a resident and a householder within the State of New York, and worth twice the sum specified in the above bond, over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

JOSEPH MILLWARD WADE.

Sworn to before me this 26th day of April, 1901.

H. H. TAYLOR,
[L. S.] *Notary Public, Kings Co., N. Y.*, 81.

32 STATE OF NEW YORK,
County of New York, } *ss:*

On the 27th day of April, 1901, before me personally came William Samuel Bigby to me known and known to me to be the individual who executed the foregoing instrument, and who acknowledged to me that he executed the same.

EDWARD HARDING,
[L. S.] *Notary Public, New York County.*

The within bond is approved.

EDWARD B. THOMAS,
U. S. District Judge, Holding the Circuit Court.

Endorsed: Bond for costs on writ of error, filed May 13th, 1901.

33 UNITED STATES OF AMERICA,
Eastern District of New York, } *ss:*

I, B. Lincoln Benedict, clerk of the circuit court of the United States for the eastern district of New York, do hereby certify that the foregoing is a true transcript of the amended petition, notice, affidavits, appearance, demurrer, orders, opinion, judgment and appeal papers, made up to be transmitted, on writ of error of the plaintiff to the Supreme Court of the United States, in the suit of William Samuel Bigby, plaintiff, *versus* The United States of America, defendant.

In witness whereof I have hereunto set my hand and the seal of this court, the 29 day of May, 1901.

[The Seal of the Circuit Court, Eastern District of New York.]

B. LINCOLN BENEDICT, *Clerk.*

34 Circuit Court of the United States for the Eastern District of New York.

WILLIAM SAMUEL BIGBY
vs.
THE UNITED STATES OF AMERICA. } Certificate.

The circuit court of the United States for the eastern district of New York hereby certifies to the Supreme Court of the United States that on the thirtieth day of January, 1901, a judgment was entered in the above-entitled action, pursuant to the decision of said court sustaining a demurrer filed by the defendant, The United States of America, to the petition of the petitioner, William Samuel Bigby, on all the grounds specified in said demurrer, namely:

(1.) That it appears upon the face of the petition that the court has no jurisdiction of the person of the defendant.

(2.) That it appears upon the face of the petition that the court has no jurisdiction of the subject of the action.

(3.) That it appears upon the face of the petition that it does not state facts sufficient to constitute a cause of action against the defendant,

a copy of which petition and demurrer is contained in the judgment-roll filed herein, to which reference is had for a more paticular description thereof.

And this court further certifies that in said cause the jurisdiction of this court is in issue, and further certifies to the Supreme
35 Court of the United States said question of jurisdiction raised by said demurrer to the petition on the grounds aforesaid, namely: The question whether a person who is not, and has not been, an employee of the United States, can sue the United States, in the circuit court of the United States, in the district where he resides, to recover damages to the amount of ten thousand ($10,000) dollars, which damages were caused by personal injury received by said person through the negligence of an employee of the United States, while said person injured as aforesaid, was being carried on an elevator in a public building, owned and used by the United States as a post-office and for other governmental uses and purposes, when said person entered said elevator for the purpose of visiting the office of the United States marshal of such district on official business.

Dated Brooklyn, Jan'y 31, 1901.

[The Seal of the Circuit Court, Eastern District of New York.]

EDWARD B. THOMAS,
United States Judge.

36 [Endorsed:] United States circuit court, eastern district of New York. William Samuel Bigby *vs.* United States. Certificate. Original. George H. Pettit, United States attorney for the defendant, Federal building, borough of Brooklyn.

37 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the eastern district of New York and to the circuit court of the United States for the eastern district of New York, Greeting:

Because in the records and proceedings and also in the rendition of the decision and judgment which is in the said circuit court, before you, between William Samuel Bigby, plaintiff, and United States of America, defendant, a manifest error has happened, to the great damage of the said William Samuel Bigby, as by his complaint and his assignment of errors appears, we being willing that the errors, if any have been, should be duly corrected, and full and speedy justice done to the said William Samuel Bigby plaintiff, in his behalf, do command you, if judgment be therein given that under your seal, distinctly and openly, you send the record and proceedings and decision and judgment and papers, with all things concerning the same, duly authenticated, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington, District of Columbia, on the 12 day of June next, in the said Supreme Court, to be then and there held, that the record and proceedings and decision and judgment aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 13th day of May in the year of our Lord 1901.

B. LINCOLN BENEDICT, *Clerk.*

Allowed by

EDWARD B. THOMAS,
United States District Judge, Holding the Circuit Court.

38 [Endorsed:] 6/147 Circuit court of the United States eastern district of New York William Samuel Bigby against The United States of America Writ of error Roger Foster, plaintiff's attorney, 35 Wall street, New York. Received and filed May 13th 1901.

39 THE UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the 12 day of June next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of New York, wherein William Samuel Bigby is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand at the borough of Brooklyn, city of New York, this 13th day of May, 1901.

EDWARD B. THOMAS,
United States District Judge, Holding the Circuit Court of the United States for the Eastern District of New York.

40 [Endorsed:] 6/147 Circuit court of the United States for the eastern district of New York William Samuel Bigby plaintiff in error against United States of America, defendant in error Citation Roger Foster, plaintiff's attorney, 35 Wall street, New York. Received and filed May 13th 1901.

41 [Endorsed:] Supreme Court of the United States William Samuel Bigby plaintiff in error *vs.* The United States of America defendant in error Record Roger Foster attorney for plaintiff in error George H. Pettit U. S. attorney and attorney for defendant in error. Writ of error from the circuit court of the United States for the eastern district of New York.

Endorsed on cover: File No. 18,191. E. New York C. C. U. S. Term No. 111. William Samuel Bigby, plaintiff in error, *vs.* The United States. Filed June 1, 1901.